



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

OCT 05 2010

CERTIFIED MAIL NO. 7003 3110 0006 2000 9127
RETURN RECEIPT REQUESTED

IN REPLY: AIR-5
REFER TO: Docket No. R9-10-14

Joseph P. Sells
President
Nevada Cement Company
3811 Turtle Creek Blvd. #1100
Dallas, TX 75219

Re: Nevada Cement Company Notice and Finding of Violation

Dear Mr. Sells:

Enclosed is a copy of a Notice of Violation and Finding of Violation ("NOV") issued pursuant to sections 113(a)(1), 113(a)(3) and 167 of the Clean Air Act, 42 U.S.C. §§ 7401-7671q (the "Act"), notifying you that the United States Environmental Protection Agency ("EPA"), Region IX, finds that the Nevada Cement Company ("NCC") has violated certain sections of the Act's Prevention of Significant Deterioration of Air Quality, National Emission Standards for Portland Cement Manufacturing Facilities and Title V Operating Permit Program, at its Portland cement plant located in Fernley, Nevada (the "Facility").

You should be aware that section 113(a)(1), 113(a)(3) and 167 of the Act authorizes EPA to issue an order requiring compliance with the requirements of the Act, issue an administrative penalty order, or commence a civil action seeking an injunction and/or a civil penalty. Furthermore, section 113(c) of the Act provides for criminal penalties in certain cases.

In addition, section 306 of the Act, 42 U.S.C. 7606, the regulations promulgated thereunder (2 C.F.R. Part 180), and Executive Order 11738 provide that facilities to be utilized in federal contracts, grants and loans must be in full compliance with the Act and all regulations promulgated pursuant to it. A violation of the Act may result in the Facility being declared ineligible for participation in any federal contract, grant, or loan.

If you wish to discuss the enclosed NOV, you may request a conference with EPA within ten (10) working days of receipt of this NOV. The conference will afford NCC an opportunity to

present information bearing on the finding of violation, the nature of the violations, and any efforts it may have taken or proposes to take to achieve compliance.

Please note, certain information contained in Appendices A and B of the NOV has been claimed as confidential business information by NCC pursuant to 40 C.F.R. Part 2. These Appendices will be protected by EPA accordingly, at least until such time that EPA makes a determination, if any, that the information does not meet the criteria to be considered CBI.

If you have any questions pertaining to this NOV, please contact Charles Aldred of the Air Enforcement Office at (415) 972-3986, or have your attorney contact Ivan Lieben of the Office of Regional Counsel at (415) 972-3914.

Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah Jordan", with a long horizontal flourish extending to the right.

Deborah Jordan
Director, Air Division

Enclosure

cc w/enc and w/o Att. A: NDEP
 Jeryl Olson, Seyfarth Shaw LLP



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

OCT 05 2010

IN REPLY: AIR-5
REFER TO: Docket No. R9-10-14

Larry Kennedy
Compliance Supervisor
Nevada Division of Environmental Protection
Bureau of Air Pollution Control
901 South Stewart St. Suite 4001
Carson City, NV 89701-5249

Dear Mr. Kennedy:

Enclosed for your information is a copy of a Notice of Violation and Finding of Violation ("NOV") that the United States Environmental Protection Agency ("EPA"), Region IX, issued to the Nevada Cement Company ("NCC") for violations of the Clean Air Act ("Act") at NCC's Portland cement plant in Fernley, Nevada (the "Facility").

The purpose of the NOV is to notify NCC that EPA finds that it has violated the Prevention of Significant Deterioration, National Emission Standards for Portland Cement Manufacturing Facilities and Title V Operating Permit Program requirements of the Act at the Facility. The violations are set forth more specifically in the enclosed NOV. The NOV has been issued pursuant to sections 113(a)(1), 113(a)(3) and 167 of the Act, 42 U.S.C. § 7401-7671q.

Please note, certain information contained in Appendices A and B of the NOV has been claimed as confidential business information by NCC pursuant to 40 C.F.R. Part 2. These Appendices will be protected by EPA accordingly, at least until such time that EPA makes a determination, if any, that the information does not meet the criteria to be considered CBI.

The Act also provides that after 30 days from the issuance of an NOV, EPA may determine if any action will be taken pursuant to Section 113 of the Act.

If you have any questions concerning this NOV, please contact Charles Aldred of the Region 9 Air Enforcement Office at (415) 972-3986, or aldred.charles@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Deborah Jordan', written over the printed name.

Deborah Jordan
Director, Air Division

Enclosure w/o Att. A

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

In the Matter of:)	
)	
NEVADA CEMENT COMPANY)	Docket No. R9-10-14
)	NOTICE OF VIOLATION
Proceeding under Section 113(a))	AND FINDING OF
of the Clean Air Act,)	VIOLATION
42 U.S.C. § 9613(a))	
)	

NOTICE OF VIOLATION AND FINDING OF VIOLATION

This Notice of Violation and Finding of Violation (NOV) is issued to the Nevada Cement Company (NCC) for violations of the Clean Air Act ("CAA" or the "Act"), as amended, 42 U.S.C. §§ 7401-7671q, at its portland cement manufacturing facility located in Fernley, Nevada (the "Facility"). NCC violated the Prevention of Significant Deterioration (PSD) and Title V Operating Permit Program requirements of the Act at the Facility. NCC also violated the National Emission Standards for Portland Cement Manufacturing Facilities at the Facility. This NOV is issued pursuant to Sections 113(a)(1), 113(a)(3) and 167 of the Act. Section 113(a)(1) requires the Administrator of the United States Environment Protection Agency ("EPA") to notify any person she finds in violation of an applicable implementation plan or a permit. The federal PSD regulations also clarify that failure to comply with the PSD provisions renders a source subject to enforcement under Section 113 of the Act. See 40 C.F.R. § 52.23. The authority to issue this NOV

has been delegated to the Regional Administrator of EPA Region IX and further re-delegated to the Director of the Air Division in EPA Region IX.

SUMMARY OF VIOLATIONS

The Facility is a portland cement manufacturing plant comprised of two long dry kilns, and associated equipment used to produce clinker, including solid fuel handling equipment, clinker coolers, assorted fans, cement finish mills, and extensive sections of ductwork.

The Facility is located in an area that has at all relevant times been classified as attainment for ozone (O₃), nitrogen dioxide (NO₂), carbon monoxide (CO), and sulfur dioxide (SO₂). Accordingly, the PSD provisions of Part C, Title I of the Act apply to operations at the Facility for oxides of nitrogen (NO_x), CO and SO₂ emissions.

NCC made a series of physical changes to its Facility from 1992 through 1999. EPA has determined that the physical or operational changes identified in this NOV, either individually or in the aggregate, were major modifications for PSD purposes since the Facility significantly increased both actual and potential emissions of NO_x, CO and SO₂ as a result of the changes. Moreover, NCC failed to apply for one or more PSD permits for the modifications covering NO_x, CO and SO₂ emissions. NCC's failure to apply for a PSD permit and install and operate

best available control technology (BACT) was, and continues to be, a violation of the PSD requirements of the Act.

NCC also violated the Title V Operating Permit Program requirements of the Act set forth at 42 U.S.C. §§ 7461-7466f, and its implementing regulations set forth at 40 C.F.R. Part 70, and the approved Nevada Division of Environmental Protection (NDEP) Title V program requirements set forth at Nevada Revised Statutes (NRS) 445B and Nevada Administrative Code (NAC) 445B. NDEP, which has jurisdiction over the Facility, has administered an approved Title V Operating Permit Program since November 30, 2001. NCC's failure to identify PSD requirements in its application submitted to NDEP for a Title V permit, supplement or correct that application to include PSD requirements, or obtain a Title V permit that contains the PSD requirements after the construction and operation of the 1992 through 1999 physical changes are violations of Title V requirements. As a result, NCC obtained a deficient Title V permit, i.e., one that did not include all applicable requirements, and therefore is operating the Facility without a valid Title V permit in violation of the Title V program requirements of the Act.

Finally, this NOV also finds that NCC failed to submit to EPA semi-annual excess emissions and continuous monitoring system performance reports and/or summary reports, and to submit performance test results as required by the National Emission

Standards for Hazardous Air Pollutants (NESHAP) General Provisions, 40 C.F.R. Part 63 Subpart A (the "General Provisions"), and the Portland Cement Manufacturing Industry standards, 40 C.F.R. Part 63 Subpart LLL (the "Cement Standards"). The Facility, as a major source of Hazardous Air Pollutants (HAPs), is an affected facility subject to the requirements of the NESHAP General Provisions and Cement Standards, and failure to submit these reports is a violation of the NESHAP requirements of the Act.

STATUTORY & REGULATORY BACKGROUND

National Ambient Air Quality Standards

1. The Administrator of EPA, pursuant to authority under Section 109 of the Act, 42 U.S.C. § 7409, has promulgated National Ambient Air Quality Standards (NAAQS) for certain criteria pollutants relevant to this NOV, including NO_x, CO, SO₂ and Ozone. See 40 C.F.R. §§ 50.4, 50.5, 50.8, 50.9, 50.10, and 50.11. NO_x serves as the regulated pollutant for the NO₂ standard and one of the regulated pollutants for the O₃ standard.

2. Pursuant to Section 107(d) of the Act, 42 U.S.C. § 7407(d), the Administrator promulgated lists of attainment status designations for each air quality control region (AQCR) in every state. These lists identify the attainment status of each AQCR for each of the criteria pollutants. The attainment status designations for the Nevada AQCRs are listed at 40 C.F.R. §§ 81.329.

Prevention of Significant Deterioration

3. Section 110 of the Act, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA a plan that provides for the implementation, maintenance and enforcement of primary and secondary NAAQS in the state. Upon approval by EPA, the plan becomes part of the applicable state implementation plan (SIP) for that state.

4. Section 110(a)(2)(C) of the Act, 42 U.S.C. § 7410(a)(2)(C), requires that each SIP include a PSD permit program as provided in Part C of Title I of the Act, 42 U.S.C. §§ 7470-7491. Part C sets forth requirements for SIPs for attainment areas to ensure maintenance of the NAAQS.

5. On June 19, 1978, pursuant to Sections 160 through 169 of the Act, 42 U.S.C. §§ 7470-7479, EPA promulgated federal PSD regulations at 40 C.F.R. § 52.21. 43 Fed. Reg. 26,402.

6. The federal PSD program was incorporated into all applicable implementation plans nationwide and contains the applicable PSD program requirements for each plan until EPA approves into an individual SIP a replacement program. See 40 C.F.R. § 52.21(a); 42 U.S.C. § 7410(a)(2)(C).

7. Pursuant to Section 107(d) of the Act, 42 U.S.C. § 7407(d), the Administrator promulgated lists of attainment status designations for each AQCR in every state. These lists identify the attainment status of each AQCR for each of the criteria pollutants. The NO₂, CO, SO₂ and O₃ attainment status designations for the Nevada AQCRs are listed at 40 C.F.R. § 81.329.

8. The NDEP has primary jurisdiction over major stationary sources of air pollution sources in the Northwest Nevada Intrastate AQCR. 40 C.F.R. § 81.115. This jurisdiction includes the Facility.

9. As NDEP has never applied for nor been granted approval of a PSD program SIP, the federal PSD program set forth at 40 C.F.R. § 52.21 contains the applicable PSD permitting program for the Northwest Nevada Intrastate AQCR.

10. Subsequent to 1978, the PSD regulations have been periodically revised. As the PSD violations identified in this NOV first commenced from 1992 through 1999, the 1992 version of the PSD regulations contain the applicable provisions pertaining to the alleged violations identified in this NOV. See 57 Fed. Reg. 32314 (July 21, 1992).

11. 40 C.F.R. § 52.21 (b)(1)(i)(a) (1992) defined a "major stationary source" as any stationary source within one of 28 source categories which emits, or has the potential to emit, 100 tons per year (tpy) or more of any air pollutant subject to regulation under the Act. Portland cement plants are included among the 28 source categories.

12. The PSD Regulations defined a "major modification" as "any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act." 40 C.F.R. § 52.21(b)(2)(i) (1992).

13. 40 C.F.R. § 52.21(b)(3)(i) (1992) defined "net emissions increase" as the "amount by which the sum of the

following exceeds zero:

a. Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

b. Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and otherwise creditable."

14. 40 C.F.R. § 52.21(b)(21) (1992) defined "actual emissions" as follows: "In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation." The PSD regulations also provide that "[f]or any emissions unit ... which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit on that date." 40 C.F.R. § 52.21(b)(21)(IV) (1992).

15. 40 C.F.R. § 52.21(b)(4) (1992) defined "potential to emit" as the "maximum capacity of a stationary source to emit a pollutant under its physical or operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including the air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable."

16. As a result, the PSD regulations utilize what has been

termed an "actual-to-potential" test to determine whether an emissions increase occurred. Moreover, 40 C.F.R. § 52.21(b)(23)(i) (1992) defined "significant" and states that, in reference to NO_x and SO₂, significant net emissions increase means an increase that would equal or exceed 40 tons or more per year and, in reference to CO, significant net emissions increase means an increase that would equal or exceed 100 tons or more per year.

17. An applicant for a PSD permit to modify a stationary source is required to submit all information necessary to allow the permitting authority to perform any analysis or make any determination required in order to issue the appropriate permit. 40 C.F.R. § 52.21(n) (1992).

18. 40 C.F.R. § 52.21(i) (1992) prohibited commencement of actual construction of a major modification to which the PSD requirements apply unless the source had a permit stating that the requirements of 40 C.F.R. §§ 52.21(j)-(r) had been met.

19. The PSD permitting process required, among other things, that for pollutants emitted in significant amounts, the owner or operation of a major source apply BACT to control emissions, 40 C.F.R. § 52.21(j) (1992); model air quality, 40 C.F.R. § 52.21(l) (1992); and perform a detailed impact analysis regarding both the NAAQS and allowable increments, 40 C.F.R. § 52.21(k) (1992).

20. Any owner or operator of a source or modification subject to 40 C.F.R. § 52.21 who commenced construction after the effective date of the PSD regulations without applying for

and receiving a PSD permit is subject to appropriate enforcement action by EPA. 40 C.F.R. § 52.21(r)(1) (1992); Sections 113 and 167 of the Act, 42 U.S.C. §§ 7413 and 7477.

Title V Operating Permit Program

21. Title V of the Act, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for "major sources," including any source required to have a PSD permit. See Section 502(a) of the Act, 42 U.S.C. § 7661a(a). Regulations implementing the Title V permit program are set forth in 40 C.F.R. Part 70.

22. Pursuant to Title V, it is unlawful for any person to violate any requirement of a permit issued under Title V or to operate a major source except in compliance with a permit issued by a permitting authority under Title V. Section 502(a) of the Act, 42 U.S.C. § 7661a(a).

23. Under Section 502(d)(1) of the Act, states were required to develop and obtain approval to administer Title V programs. 42 U.S.C. § 7661a(d)(1). EPA granted interim approval of NDEP's Title V Operating Permit Program effective January 11, 1996, and final full approval was effective November 30, 2001. See 40 C.F.R. Part 70 Appendix A. NDEP's approved Title V program is found at NRS 445B and NAC 445B.

24. Sources subject to Title V and falling under NDEP's

jurisdiction are required to submit to NDEP timely and complete Title V applications that identify, among other things, all "applicable requirements," including PSD requirements. See 40 C.F.R. § 70.5(a); NAC 445B.3361 & 3363.

25. Sources subject to Title V and falling under NDEP's jurisdiction who have submitted an application are required to supplement or correct the application to include applicable requirements that were not included in the original application. 40 C.F.R. § 70.5(b).

26. Sources subject to Title V and falling under NDEP jurisdiction must obtain a Title V permit that: 1) contains such conditions necessary to assure compliance with the applicable requirements; 2) identifies all applicable requirements the source is subject to; and 3) certifies compliance with all applicable requirements, and 4) where a source is not meeting requirements, contains a plan for coming into compliance. Sections 503 and 504 of the Act, 42 U.S.C. §§ 7661b and 7661c(a); 40 C.F.R. §§ 70.1, 70.5 and 70.6; NAC 445B.3365.

27. Failure of a source subject to Title V to submit a complete application, supplement that application when new requirements become applicable, or to obtain a Title V permit that contains all applicable requirements, such as PSD requirements, are violations of the Act.

National Emission Standards for Hazardous Air Pollutants

28. Pursuant to Section 112 of the Act, the Administrator of the EPA promulgated the following NESHAP standards: 40 C.F.R. Part 63, Subpart A -- General Provisions (the "General Provisions"), as amended (40 C.F.R. §§ 63.1 through 63.15) -- and Subpart LLL -- National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry (the "Cement Standards"), as amended (40 C.F.R. §§ 63.1340 through 63.1359).

29. The General Provisions applicability requirements provide, in pertinent part, that the NESHAP standards "regulate specific categories of stationary sources that emit (or have the potential to emit) one or more hazardous air pollutants listed in this part pursuant to Section 112 (b) of the Act." 40 C.F.R. § 63.1.

30. The NESHAP General Provisions' recordkeeping and reporting requirements provide, in pertinent part, that "the owner or operator of an affected source required to install a [Continuous Monitoring System]. . . shall submit an excess emissions and continuous monitoring system performance report and/or a summary report to the Administrator semiannually." 40 C.F.R. § 63.10(e)(3).

31. The NESHAP General Provisions define "Continuous Monitoring System" as a "comprehensive term that may include, but is not limited to, continuous emission monitoring systems,

continuous opacity monitoring systems, continuous parameter monitoring systems, or other manual or automatic monitoring that is used for demonstrating compliance with an applicable regulation on a continuous basis as defined by the regulation." 40 C.F.R. § 63.2.

32. The NESHAP General Provisions defines, in pertinent part, "major source" as "any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. . . ." 40 C.F.R. § 63.2.

33. The Cement Standards contain emissions limits for particulate matter/opacity ("PM Emissions Standards") and dioxins/furans ("D/F Emissions Standards"):

"Existing kilns located at major sources. No owner or operator of an existing kiln or an existing kiln/raw mill located at a facility that is a major source subject to the provisions of this subpart shall cause to be discharged into the atmosphere from these affected sources, any gases which:

(1) Contain particulate matter (PM) in excess of 0.15 kg per Mg (0.30 lb per ton) of feed (dry basis) to the kiln. When there is an alkali bypass associated with a kiln or in-line kiln/raw mill, the combined particulate matter emissions from the kiln or in-line kiln/raw mill and the alkali bypass are subject to this emission limit.

(2) Exhibit opacity greater than 20 percent.

(3) Contain D/F in excess of:

(i) 0.20 ng per dscm (8.7×10^{-11} gr per dscf) (TEQ); or

(ii) 0.40 ng per dscm (1.7×10^{-10} gr per dscf) (TEQ) when the average of the performance test run average temperatures at the inlet to the particulate matter control device is 204 °C (400 °F) or less." 40 C.F.R. §§ 63.1343.

35. The Cement Standards define, in pertinent part, an "affected source" as each kiln; clinker cooler; raw mill; finish mill; raw material dryer, raw material, clinker, or finished product storage bin; conveying system; and bagging and bulk loading and unloading system at any portland cement plant. 40 C.F.R. § 63.1340(b).

36. The Cement Standards and NESHAP General Standard require that owners or operators of an affected source subject to the D/F Emission Standards PM Emission Standards conduct an initial performance test within 180 days of the effective date of the regulation, June 14, 2002, and for the D/F Emission Standards repeat the test every 30 months and for the PM Emission Standards repeat the test every 5 years. See 40 C.F.R. §§ 63.7, 63.1349, 63.1351, and 63.1354.

37. The Cement Standards require that owners or operators of an affected source subject to the D/F Emissions Standards monitor and maintain records of the temperature of the exhaust gases from the kiln, in-line kiln/raw mill and alkali bypass, if applicable, at the inlet to, or upstream of, the kiln, in-line kiln/raw mill and/or alkali bypass PM control devices. 40 C.F.R. § 63.1350(f).

38. The reporting requirements of the Cement Standards require that an affected source submit to EPA, consistent with 40 C.F.R. § 63.10 of the NESHAP General Provisions, the results of all performance tests within 60 days of completion of the test as well as submit to EPA semiannually an excess emissions and continuous monitoring system performance report and/or a summary report. 40 C.F.R. § 63.1354(b).

FINDINGS OF FACT AND VIOLATION

39. The Facility is a portland cement manufacturing facility, which is located in Fernley, Lyon County, Nevada.

40. The Northwest Nevada Intrastate AQCR, which includes Lyon County where the Facility is located, was designated as attainment/unclassifiable at all times for NO₂, CO, SO₂ and O₃ by operation of law under Sections 107(d)(1)(C) and 186(a) of the Act, 42 U.S.C. §§ 7407(d)(1)(C) and 7486(a). See 56 Fed. Reg. 56694 (Nov. 6, 1991); 40 C.F.R. § 81.329.

41. NCC is the current owner and operator of the Facility.

42. The Facility includes two long dry kilns, and associated equipment used to produce clinker, including, solid fuel handling equipment, clinker coolers, various fans, raw mill systems, cement finish mills, and extensive sections of ductwork.

43. The combustion of coal, petroleum coke, and natural gas at the kilns at the Facility produces emissions NO_x, CO and

SO₂, which are released to the atmosphere from the Facility.

44. Between 1992 and 1999, NCC commenced construction of various physical changes at the Facility, and has continued to operate the Facility with these changes. As the underlying documents identifying these physicals changes have been claimed as confidential business information (CBI) by NCC, these changes are not specifically identified in this NOV but rather in Appendix A. Appendix A will be protected by EPA as CBI, at least until such time that EPA makes a determination, if any, that the information does not meet the criteria to be considered CBI.

45. NCC intended that these physical changes, either individually or in the aggregate, would increase the production capacity of the Facility.

46. These physical changes, either individually or in the aggregate, resulted in an increase in annual clinker production at the Facility.

47. NCC submitted a notification to EPA on October 4, 1999 which indentified the Facility as a major source under the NESHAP Cement Standards.

Prevention of Significant Deterioration

48. The Facility currently has federally enforceable annual emission limits of 4,187.03 tons of NO_x, 336.06 tons of CO, and 376.09 tons of SO₂. These limits are, at a minimum, 40

tpy higher than the Facility's baseline of annual SO₂ and NO_x emissions and 100 tpy higher than the Facility's baseline of annual CO emissions prior to the physical changes identified in Paragraph 44.

49. Each of the physical changes identified in Paragraph 44 caused, either individually or in the aggregate, a "net emissions increase" from the Facility of greater than 40 tpy year of a NO_x and SO₂ and 100 tpy of CO.

50. As a result, each of the physical changes identified in Paragraph 44 constituted, either individually or in the aggregate, a "major modification" to the Facility for PSD purposes, as defined by 40 C.F.R. § 52.21 (b)(2)(i).

51. NCC did not apply for a PSD Permit covering NO_x, CO and SO₂ emissions for any of the physical changes identified in Paragraph 44.

52. NCC failed to install and operate BACT-level emission controls for NO_x, CO and SO₂ emissions from the Facility either at the time each of the physical changes identified in Paragraph 44 were commenced or any time since their completion and operation.

Title V Operating Permit Program

53. As alleged in Paragraphs 39 through 52, NCC commenced one or more PSD major modifications at its Facility commencing from 1992 through 1999, and the modifications triggered the requirements to obtain a PSD permit, undergo a PSD BACT

analysis, and operate in compliance with the PSD permit. NCC failed to satisfy these requirements.

54. NCC submitted a Title V application to NDEP in November 1996. The final Title V permit was issued by NDEP to NCC for the Facility on October 30, 2006.

55. As part of its Title V application to NDEP, NCC failed to identify all applicable requirements, including PSD requirements for NO_x, CO and SO₂ related to the physical changes at the Facility identified in Paragraph 44, a plan to come into compliance with those PSD requirements, and a certification of compliance that included the PSD requirements.

56. Moreover, prior to issuance of the Title V permit, NCC failed to supplement and/or correct its Title V permit application to include the PSD provisions identified in Paragraph 53.

57. As a result of NCC's failure to provide complete information in its Title V application or to supplement and/or correct its Title V application to include PSD requirements, NCC obtained a deficient Title V operating permit that did not contain all applicable requirements.

58. Pursuant to Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), it is unlawful for any person to operate a source required to have a PSD permit except in compliance with a permit issued by a permitting authority under Title V. Similarly, 40

C.F.R. §§ 70.1(b) and 70.6(a); NRS 445B; and NAC 445B require sources subject to Title V to have an operating permit that assures compliance with all applicable requirements.

59. NCC has operated and continues to operate the Facility without a valid Title V operating permit in violation of Sections 502, 503 and 504 of the Act, 42 U.S.C. §§ 7661a, 7661b, and 7661c; 40 C.F.R. §§ 70.1, 70.5 and 70.6; NRS 445B; and NAC 445B.

NESHAP General Provisions and Cement Standards

60. The Facility is an existing major source of HAPs under the NESHAP General Provisions and is considered an existing portland cement plant under the Cement Standards.

61. As a result, the Facility has been an affected source for the Cement Standards of the Cement Standards since June 14, 2002, and therefore has also been subject to the NESHAP General Provisions during that time.

62. Under the Cement Standards, the Facility, at a minimum, is required to continuously monitor the temperature of its kiln.

63. Under the NESHAP General Provisions, and the PM Emission Standards and D/F Emission Standards of the Cement Standards, since at least June 14, 2002, the Facility was required to perform certain performance tests and submit the results to EPA within 60 days of their completion and also to

submit to EPA semiannually an excess emissions and continuous monitoring system performance report and/or a summary report.

64. Since June 14, 2002, NCC has failed to submit to EPA performance test results or semiannual excess emissions and continuous monitoring system performance reports and/or a summary reports as required by the NESHAP General Provisions and the Cement Standards.

FINDING OF VIOLATION

Prevention of Significant Deterioration

65. Pursuant to Section 113(a)(1) of the Act, notice is hereby given to NCC that the Administrator of the EPA, by authority duly delegated to the undersigned, finds that NCC violated, and continues to violate federal PSD requirements at the Facility described in this NOV. EPA reserves the right to amend this NOV or issue a new NOV based on additional information obtained through Section 114 of the Act or any other source available to the Administrator at any point.

Title V Operating Permit Program

66. Notice is also given to NCC that it failed to supplement or correct its Title V application submitted to NDEP to include PSD requirements or obtain a Title V permit that contained PSD requirements, and therefore is in violation of Title V of the Act. NCC thereafter operated the Facility without PSD requirements and without having an operating permit that requires compliance with PSD requirements or that contains a compliance plan for PSD requirements for which the Facility is

not in compliance.

NESHAP General Provisions and Cement Standards

67. Notice is also given to NCC that it failed to submit performance test results or semiannual excess emissions and continuous monitoring system performance reports and/or a summary reports for the Facility as required by the NESHAP General Provisions the Cement Standards, and therefore is in violation of Section 112 of the Act.

ENFORCEMENT

68. For any violation of a SIP, such as for PSD violations, Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), provides that at any time after the expiration of 30 days following the date of the issuance of a notice of violation, the Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the SIP, issue an administrative penalty order, or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties of not more than \$25,000 per day for each violation that occurs on or before January 30, 1997, not more than \$27,500 per day for each violation that occurs after January 30, 1997, not more than \$32,500 per day for each violation that occurs after March 14, 2004; and not more than \$37,500 per day for each violation that occurs after January 12, 2009. 42 U.S.C. § 7413(a)(1); Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, as amended; 40 C.F.R. Part 19.

69. Sections 113(a)(3) and 167 of the Act, 42 U.S.C.

§§ 7413(a)(3) and 7477, provide additional authority for EPA to enforce against violators of the Act.

70. Section 113(c) of the Act, 42 U.S.C. § 7413(c), provides for criminal penalties, imprisonment, or both for persons who knowingly violate any federal regulation or permit requirement. For violations of the SIP, a criminal action can be brought 30 days after the date of issuance of a Notice of Violation.

71. Section 306 of the Act, 42 U.S.C. § 7606, the regulations promulgated thereunder (2 C.F.R. Part 180), and Executive Order 11738 provide that facilities to be utilized in federal contracts, grants and loans must be in full compliance with the Act and all regulations promulgated pursuant to it. A violation of the Act may result in NCC and/or the Facility being declared ineligible for participation in any federal contract, grant, or loan.

PENALTY ASSESSMENT CRITERIA

72. Section 113(e)(1) of the Act, 42 U.S.C. § 9613(e)(1), states that the Administrator or the court shall determine the amount of a penalty to be assessed by taking into consideration such factors as justice may require, including the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violations, the economic benefit of

noncompliance, and the seriousness of the violation.

73. Section 113(e)(2) of the Act, 42 U.S.C. § 9613(e)(2), allows the Administrator or the court to assess a penalty for each day of violation. This section further provides that for purposes of determining the number of days of violation, where EPA makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of an NOV, the days of violation shall be presumed to include the date of the NOV and each and every day thereafter until the facility establishes that continuous compliance has been achieved, except to the extent that the facility can prove by the preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

OPPORTUNITY FOR CONFERENCE

74. NCC may confer with EPA regarding this NOV if it so requests. A conference would enable NCC to present evidence bearing on the finding of violation, on the nature of violation, and on any efforts it may have taken or proposes to take to achieve compliance. If NCC seeks such a conference, it may

choose to be represented by counsel. If NCC wishes to confer with EPA, it must make a request for a conference within 10 working days of receipt of this NOV. Any request for a conference or other inquiries concerning the NOV should be made in writing to:

Ivan Lieben
Office of Regional Counsel
U.S. EPA (ORC-2)
75 Hawthorne Street
San Francisco, CA 94105

(415) 972-3914

Dated:

10/4/2010



Deborah Jordan
Director, Air Division